

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

<b>Eolas Technologies Incorporated,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civil Action No. 6:09-CV-00446-LED</b>
	§	
	§	
<b>vs.</b>	§	
	§	
<b>Adobe Systems Inc., Amazon.com, Inc.,</b>	§	<b>JURY TRIAL</b>
<b>Apple Inc., Argosy Publishing, Inc.,</b>	§	
<b>Blockbuster Inc., CDW Corp.,</b>	§	
<b>Citigroup Inc., eBay Inc., Frito-Lay, Inc.,</b>	§	
<b>The Go Daddy Group, Inc., Google Inc.,</b>	§	
<b>J.C. Penney Company, Inc., JPMorgan</b>	§	
<b>Chase &amp; Co., New Frontier Media, Inc.,</b>	§	
<b>Office Depot, Inc., Perot Systems Corp.,</b>	§	
<b>Playboy Enterprises International, Inc.,</b>	§	
<b>Rent-A-Center, Inc., Staples, Inc., Sun</b>	§	
<b>Microsystems Inc., Texas Instruments Inc.,</b>	§	
<b>Yahoo! Inc., and YouTube, LLC</b>	§	
	§	
<b>Defendants.</b>	§	

**EOLAS' REPLY TO DEFENDANT OFFICE DEPOT, INC.'S ANSWER AND  
COUNTERCLAIMS**

Plaintiff Eolas Technologies Incorporated ("Eolas" or "Plaintiff") hereby replies to the counterclaims set forth in Office Depot, Inc.'s ("Office Depot") Answer and Counterclaims as follows:

**COUNTERCLAIMS**

**The Parties**

65. On information and belief, based solely on Office Depot's response to paragraph 16 of Eolas' Complaint, Eolas admits the allegations in paragraph 65 of Office Depot's Answer and Counterclaims.

66. Eolas admits the allegations in paragraph 66 of Office Depot's Answer and Counterclaims.

### **Jurisdiction and Venue**

67. Eolas admits that Office Depot's counterclaims arise under the Patent Laws of the United States, Title 35, United States Code. Eolas admits that the jurisdiction of this court is proper over these counterclaims. Eolas admits that venue is proper in this District, and in the Tyler Division. Except as so admitted, Eolas denies the allegations in paragraph 67 of Office Depot's Answer and Counterclaims.

68. Eolas admits that this Court has personal jurisdiction over it. Except as so admitted, Eolas denies the allegations in paragraph 68 of Office Depot's Answer and Counterclaims.

### **Count I**

#### **Declaratory Judgment of Non-Infringement of the '906 Patent**

69. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the infringement of the '906 patent. Except as so admitted, Eolas denies the allegations in paragraph 69 of Office Depot's Answer and Counterclaims.

70. Paragraph 70 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmation or denial. To the extent any response is warranted, Eolas responds as follows: denied.

71. Eolas denies the allegations in paragraph 71 of Office Depot's Answer and Counterclaims.

## **Count II**

### **Declaratory Judgment of Invalidity of the '906 Patent**

72. Paragraph 72 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

73. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the validity of the '906 patent. Except as so admitted, Eolas denies the allegations in paragraph 73 of Office Depot's Answer and Counterclaims.

74. Paragraph 74 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

75. Eolas denies the allegations in paragraph 75 of Office Depot's Answer and Counterclaims.

## **Count III**

### **Declaratory Judgment of Non-Infringement of the '985 Patent**

76. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the infringement of the '985 patent. Except as so admitted, Eolas denies the allegations in paragraph 76 of Office Depot's Answer and Counterclaims.

77. Paragraph 77 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

78. Eolas denies the allegations in paragraph 78 of Office Depot's Answer and Counterclaims.

#### **Count IV**

##### **Declaratory Judgment of Invalidity of the '985 Patent**

79. Paragraph 79 of Office Depot's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

80. Eolas admits that there is an actual and justiciable controversy between Eolas and Office Depot regarding the validity of the '985 patent. Except as so admitted, Eolas denies the allegations in paragraph 80 of Office Depot's Answer and Counterclaims.

81. Paragraph 81 of Office Depots's Answer and Counterclaims does not contain a statement which warrants an affirmance or denial. To the extent any response is warranted, Eolas responds as follows: denied.

82. Eolas denies the allegations in paragraph 82 of Office Depot's Answer and Counterclaims.

##### **OFFICE DEPOT'S REQUESTED RELIEF**

Eolas denies that Office Depot is entitled to the relief requested in paragraphs a-g of its Answer and Counterclaims or any other relief on its Counterclaims.

##### **OFFICE DEPOTS' JURY DEMAND**

Office Depot's jury demand does not contain a statement which warrants an affirmance or denial.

##### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Eolas Technologies Incorporated, prays for the following relief against Defendant Office Depot, Inc.:

A. that all relief requested by Eolas in its Complaint be granted;

B. that all relief requested by Office Depot in its Answer and Counterclaims to Plaintiff's Complaint be denied and that Office Depot take nothing by way of its Counterclaims;

C. that Office Depot be ordered to pay the costs of this action (including all disbursements) and attorney fees as provided by 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and

D. such other and further relief as the Court deems just and equitable.

### **AFFIRMATIVE DEFENSES**

As affirmative defenses, Eolas alleges as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

Office Depot has failed to state a claim upon which relief can be granted, with respect to each cause of action set forth in its Answer and Counterclaims.

#### **SECOND AFFIRMATIVE DEFENSE**

Office Depot has failed to state facts and/or a legal basis sufficient to permit recovery of its attorneys' fees and/or expenses for defending this suit.

#### **OTHER AFFIRMATIVE DEFENSES**

Eolas hereby gives notice that it intends to rely upon any other defense that may become available in this case and hereby reserves the right to amend this Answer to assert any such defense.

#### **DEMAND FOR JURY TRIAL**

Eolas demands a trial by jury of any and all issues triable of right before a jury.

DATED: January 11, 2010.

Respectfully submitted,

**McKool Smith, P.C.**

/s/ Mike McKool

Mike McKool

Lead Attorney

Texas State Bar No. 13732100

[mmckool@mckoolsmith.com](mailto:mmckool@mckoolsmith.com)

Douglas Cawley

Texas State Bar No. 04035500

[dcawley@mckoolsmith.com](mailto:dcawley@mckoolsmith.com)

Luke McLeroy

Texas State Bar No. 24041455

[lmcleroy@mckoolsmith.com](mailto:lmcleroy@mckoolsmith.com)

**McKool Smith, P.C.**

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Telecopier: (214) 978-4044

Sam F. Baxter

Texas State Bar No. 01938000

[sbaxter@mckoolsmith.com](mailto:sbaxter@mckoolsmith.com)

**McKool Smith, P.C.**

104 E. Houston St., Ste. 300

P.O. Box O

Marshall, Texas 75670

Telephone: (903) 923-9000

Telecopier: (903) 923-9095

Kevin L. Burgess

Texas State Bar No. 24006927

[kburgess@mckoolsmith.com](mailto:kburgess@mckoolsmith.com)

Steven J. Pollinger

Texas State Bar No. 24011919

[spollinger@mckoolsmith.com](mailto:spollinger@mckoolsmith.com)

Josh W. Budwin

Texas State Bar No. 24050347

[jbudwin@mckoolsmith.com](mailto:jbudwin@mckoolsmith.com)

**McKool Smith, P.C.**

300 West Sixth Street, Suite 1700

Austin, Texas 78701

Telephone: (512) 692-8700

Telecopier: (512) 692-8744

**ATTORNEYS FOR PLAINTIFF  
EOLAS TECHNOLOGIES, INC.**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic services on this the 11<sup>th</sup> day of January, 2010. Local Rule CV-5(a)(3)(A).

/s/ Josh Budwin

\_\_\_\_\_  
Josh Budwin